

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

David Warren Huffman, :
Plaintiff, : Case No. 1:24-cv-35
v. : Judge Susan J. Dlott
Warden, Ohio State Penitentiary, : Order Adopting Report and
Defendant. : Recommendation

This matter is before the Court on the Report and Recommendation entered by Magistrate Judge Peter B. Silvain, Jr. on July 16, 2024. (Doc. 14.) The Magistrate Judge recommended that the Court should transfer the Amended Petition for Writ of Habeas Corpus (“Amended Petition”) to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631 because it is a second or successive petition within the meaning of 28 U.S.C. § 2244(b). Plaintiff did not object to the Report and Recommendation. For the reasons below, the Court will **ADOPT** the Report and Recommendation and **TRANSFER** the Amended Petition to the Sixth Circuit.

I. STANDARD OF LAW AND ANALYSIS

Title 28 U.S.C § 636(b)(1)(B) and Federal Rule of Civil Procedure Rule 72(b)(1) authorize magistrate judges to make recommendations concerning dispositive motions and prisoner petitions challenging conditions of confinement. Parties then have fourteen days to make file and serve specific written objections to the report and recommendation. 28 U.S.C. 636(b)(1); Fed. R. Civ. P. 72(b)(2). When no objections are filed, “[t]here is no indication that Congress, in enacting § 636(b)(1)(C), intended to require a district judge to review [the] magistrate’s report.” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also Weir v. Centurion*, No. 3:19-CV-00131, 2021 WL 5165930, at *1 (M.D. Tenn. Nov. 5, 2021) (“The district court is not

required to review, under a de novo or any other standard, those aspects of the report and recommendation to which no objection is made.”). Still, some district courts follow the Advisory Committee Notes to Rule 72(b) and review the report and recommendation for clear error. *See e.g., Roane v. Warden of Corr. Reception Ctr.*, No. 2:22-CV-2768, 2022 WL 16535903, at *1 (S.D. Ohio Oct. 28, 2022); *Lassiter v. Dullaghan*, No. 1:10-CV-010, 2011 WL 110259, at *1 (S.D. Ohio Jan. 13, 2011). “The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1) (substantially similar).

Magistrate Judge Silvain committed no clear error in recommending that this case be transferred to the Sixth Circuit. The Amended Petition is a second or successive petition under 28 U.S.C. § 2244(b). Plaintiff must apply for an order from the Sixth Circuit authorizing this Court to consider the Amended Petition. 28 U.S.C. § 2244(b)(3). The Court will transfer the case pursuant to 28 U.S.C. § 1631 to the Sixth Circuit.

II. CONCLUSION

The Report and Recommendation (Doc. 14) is **ADOPTED**. The Clerk of Court is directed to **TRANSFER** the Amended Petition to the Sixth Circuit Court of Appeals for review and determination of whether this Court may consider the successive claims for relief.

IT IS SO ORDERED.

BY THE COURT:



Susan J. Dlott
United States District Judge